

Gross receipts from a sale in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made, are not subject to tax. See 86 Ill. Adm. Code 130.605. (This is a GIL).

May 19, 1999

Dear Xxxxx:

This letter is in response to your letter dated May 3, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

International trade means moving cargo between U.S. Great Lakes ports and foreign ports of call via the St. Lawrence Seaway. At this time, all vessels in this trade are foreign flagged, owned and operated.

STATE participates in this trade at the PLACE. These foreign cargo ships come from overseas ports to CITY through the Seaway System. As you might imagine, a vessel might need certain provisions as it transits the globe. In CITY, there is at least one retail provider, BUSINESS, that makes provisions available to these foreign vessels.

The Illinois Department of Revenue recently conducted an audit of BUSINESS and requested that sales tax of past and future purchases be assessed to these vessels. BUSINESS has passed the request for sales tax to our local ship agents who order the provisions for the vessels.

We believe that sales tax should not be assessed under these circumstances because the vessel takes direct possession of provisions and the vessel is considered 'foreign soil.' We understand that a 'freight forwarder' is exempt as they expedite the transfer of a sale in the State of Illinois to a foreign country. The ship agent similarly arranges a sale and for the transfer of provisions directly to the vessel. At no time do these products get resold or returned to the State of Illinois.

Our research of sales practices in other coastal states has found that foreign vessels are particularly exempt from sales tax in a given state. Additionally, we believe that the U.S. Custom Service views these types of purchases as exports, recognizing that the vessel - though in U.S. waters - is foreign soil. Please provide us with a

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confirmation of the above interpretation so that we may, in turn, provide BUSINESS with a response to their request.

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of such business. See the enclosed copy of 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See the enclosed copy of 86 Ill. Adm. Code 150.101. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase.

When tangible personal property is located in this State at the time of its sale (or is subsequently produced in this State) and then is delivered in this State to the purchaser, the gross receipts from the sale are subject to tax if the sale is at retail. However, the gross receipts from a sale in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made, are not subject to tax. See subsection (b) of the enclosed copy of 86 Ill. Adm. Code 130.605. Please note that a sale is taxable even though a purchaser that receives physical possession of the property in this State, transports or sends the property out of this State for use outside the State or for use in the conduct of interstate or foreign commerce. See part (2) of subsection (a) of Section 130.605.

For example, the exemption would apply when a seller makes delivery in Illinois to a freight forwarder who handles the arrangements for the property to be delivered outside the United States, not to be returned to the United States. The result would be different if the purchaser received or picked up the goods prior to delivery to a freight forwarder. Retailers who ship property to freight forwarders who take possession of the property in Illinois and ship the property to foreign countries, not to be returned to the United States, are making exempt sales in foreign commerce and do not incur Retailers' Occupation Tax liability on the gross receipts from those sales. In order to document the exemption, the seller should obtain a statement from the purchaser that the property will be used exclusively outside the United States and a shipping document showing delivery of physical possession of the property to a freight forwarder in Illinois.

Illinois has no specific exemption for property delivered in Illinois to foreign vessels. If foreign vessels purchase items of tangible personal property from Illinois retailers and have those items delivered to their vessel in an Illinois port, the sale is being made in Illinois, the purchaser is taking possession of the items in Illinois and therefore the sale is taxable.

Please note that Illinois does have a rolling stock exemption that may be applicable. The Retailers' Occupation Tax Act provides an exemption for tangible

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personal property sold to interstate carriers for hire for use as rolling stock moving in interstate commerce or to lessors of such interstate carriers. See 35 ILCS 120/2-5(12) and (13) (1996 State Bar Edition). The exemption is described in the enclosed copy of 86 Ill. Adm. Code 130.340. The carrier must move in interstate commerce on a regular and frequent basis in order to qualify for the exemption.

Not all items of tangible personal property used on an interstate carrier for hire qualify for the rolling stock exemption. To qualify, the property must be physically incorporated into the vehicle that is an interstate carrier for hire. Repair parts and paints that become a physical component of the qualifying "rolling stock" qualify for the exemption. Supplies that do not become a physical component of the qualifying "rolling stock" do not qualify for the exemption.

When making purchases of qualifying property, the purchasers must provide the sellers with a certification that they are interstate carriers for hire and that they are purchasing the property for use as rolling stock moving in interstate commerce. Form RUT-7 Rolling Stock Certificate (copy enclosed), signed by the purchasers, is used to document the exemption.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk

Enc.